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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,951

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Bogomir Gorenssek

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08/21/2006

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EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,951

Applicant(s)

GORENSEK ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 16, 18-25, 27-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Branch et al. (6,174,311).

With respect to claim 1, 18, Branch et al disclose an implantable stabilizing device for stabilizing two adjacent vertebral bodies in the human spine comprising an elongated body (436) having longitudinal axis and a transverse axis, a first bone cutting surface or shearing means (437) on the elongated body offset from the longitudinal axis, a second bone cutting surface or shearing means (439) on the elongated body offset from the longitudinal axis; as set best seen in FIG. 34, wherein the first bone cutting surfaces or shearing means faces in a first direction and the second bone cutting surface or shearing means faces in a second direction, as best seen in FIGS.34a-d; wherein the first and second bone cutting surfaces comprise a leading edge (440,443) adapted to straight cutting as the implantable stabilizing device is advanced between adjacent vertebrae; wherein the first and second bone cutting surfaces comprise a horizontal edges (438,442) for rotational cutting as the implantable stabilizing device is rotated between the adjacent vertebrae; and wherein the a width (448) between the first bone cutting surface and the second bone cutting surface is adapted to hold harvested bone; as set forth in column 18, lines 52-53; first bone cutting surface and second bone

cutting surface connected by a support member, as best seen in FIG.34d, the first bone cutting and the second bone cutting surface comprise first leading edge, first trailing edge, first top edge and first bottom edge; second leading edge, second trailing edge, second top edge and a second bottom edge; as best seen in FIGS. 34 (a-d).

With respect to claims 2-11,16,19-25, Branch et al discloses all the limitations; as set forth in column 18, lines 47-64; column 23, lines 43-57; and as best seen in FIGS.34 (a-d).

With respect to claims 27-38, the method steps, as set forth, would have been inherently carried out in the operation of the device; as set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-15,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branch et al. (6,174,311) in view of Wicker et al (3,527,841).

With respect to claims 12-15,17, it is noted that Branch et al did not teach of a device comprising surfaces treated with a surface treatment that is a bone growth facilitator and an adhesive that is cyanoacrylate, as claimed by applicant. However, in a similar art, Wicker et al., column 1, line 25-39, column 2, lines 20-23, evidence that the use of a surface treatment that inhibits growth facilitator and that is cyanoacrylate

adhesive is old and well known in the art of surgical applications to aid in the repair and regrowth of living tissue.

Therefore, given the teaching of Wicker et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a surface treatment in the device of Branch et al, as taught by Wicker et a., to aid in the repair and regrowth of living tissue.

Response to Amendment

Applicant's arguments, see Remarks, filed 6/14/06, with respect to the rejection(s) of claim(s) 1-38 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Branch et al. As to applicant's arguments concerning the method claims, applicant's attention is directed to column 23, lines 43-57, wherein the implant (430) is left in position between the vertebrae.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone

Art Unit: 3733

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
August 17, 2006



PEDRO PHILOGENE
PRIMARY EXAMINER